THE ART OF COURTROOM PRESENTATION

Testifying as an expert is often a four-stage process: Voir Dire, Direct Examination, Cross-Examination and Re-Direct Examination. It is imperative that the client, attorney and you have the proper preparation, attitude and teamwork in each of these stages.

It is the day of trial, the attorney for your client stands up and states to the Judge, "Your Honor, I would like to call Fraud Buster as my next witness." You proceed to take the witness stand, you raise your right hand, and the bailiff swears you in… "Do you swear to tell the truth, the whole truth, and nothing but the truth?" You reply, "Yes." You think you are ready, but are you? Before your attorney can even begin questioning you about your 200 page report, with Exhibits A – ZZZ, the opposing attorney stands and interjects "Your Honor, I would like to voir dire the expert." And so it begins…

I. VOIR DIRE

Voir Dire is the preliminary examination of prospective jurors or witnesses under oath to determine their competence or suitability, to determine if they can give relevant testimony to assist the trier of fact. No matter whether it is your first time testifying or your fiftieth, the process of voir dire can be extremely unnerving. Your credentials, experience and methodology are being questioned and your competency to render an expert opinion will be determined by a neutral third party, the Judge.

A. FEDERAL RULES

Federal Rule of Evidence 501 regarding Attorney Client Privilege titled General Rule states:

"Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law."

The landmark case of *U.S. v. Kovel*, 296 F. 2d 918 (2d Cir. 1961) extends attorney client privilege to third parties hired by a lawyer or a client to assist in providing legal services to a client. However, your role as an expert (i.e. a consulting non-testifying expert or a testifying expert) will impact whether your work is "discoverable" or whether your work is protected by Federal Rule of Evidence 501 and *U.S. v. Kovel*. Further it is extremely important from the commencement of your services that you define with the client what your roles and responsibilities will be as it impacts whether you execute the engagement agreement with the client or the attorney.

If you are retained as a consulting, non-testifying advisor by the attorney, your work file is protected under the attorney-client privilege so long as you are assisting in giving legal advice to the client, but there are certain things you as the expert should do to ensure the attorney client privilege. Specifically, you as the expert should (1) execute the engagement agreement with the lawyer, not the client and clearly specify your roles and responsibilities; (2) label your work product as "protected by the attorney-client and work product privileges;" (3) Do not speak to the potential client prior to being retained by the attorney, (however, if you happen to be the

client's present accountant, segregate the matters which will be part of the attorney client privilege.) See *U.S. v. Cote* 456 F. 2d 142 (8th Cir. 1972); and (4) only communicate with the client at the counsel's direction See *U.S. v. Bein,* 728 F. 2d 107 (2d Cir. 1984). This list although not exclusive, should give you a guideline and stresses the importance of abiding by the case law.

However, if you are retained as a testifying expert, your role will be to testify in open court and submit a report and you will need to execute the engagement agreement with your client. As a testifying expert, your working file, including drafts of your report are discoverable and not protected by the attorney-client privilege.

Federal Rule of Evidence 702 titled Testimony of Experts states:

"If scientific, technical, or other specialized knowledge will *assist the trier of fact* to understand the evidence or to determine a fact in issue, a witness ***qualified as an expert by knowledge, skill, experience, training, or education****,* may testify thereto in the form of an opinion or otherwise, if (1) the testimony is *based on sufficient facts* or data, (2) the testimony is the *product of reliable principles and methods,* and (3) the witness has *applied* the principles and methods *reliably* to the facts of this case."

Federal Rule of Evidence 703 Basis of Opinion Testimony by Experts states:

"The facts or data in the particular case upon which an expert basis an opinion or inference may be those perceived by or made known to the expert at or before the hearing. *If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible* in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their

prohibitive value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect."

Federal Rule of Evidence 704 titled “Opinion on Ultimate Issue” states:

“(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.”

Federal Rule of Evidence 705 titled “Disclosure of Facts or Data Underlying Expert Opinion” states:

“The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.”

Federal Rule of Evidence 706 titled “Court Appointed Experts” states:

“(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed

shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness. (b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness. (d) Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection."

B. QUALIFICATIONS

The Federal Rules of Evidence state that a person ***qualified as an expert by knowledge, skill, experience, training, or education***, may testify thereto in the form of an opinion. Case law has defined a Qualified Expert. During voir dire, the attorneys and the Judge will follow the rules of the controlling case in the state in which you are testifying to attempt to qualify, or on the opponent's side, disqualify you, as an expert witness. Your curriculum vitae serves as the written evidence of your qualifications. It should list your education, licenses, certifications, work history, teaching experience, speaking engagements, professional publications, and professional memberships (including any officer designations). Finally, any distinguished positions you hold, (i.e. adjunct professor) should be highlighted.

C. METHODOLOGY

The Federal Rules of Evidence also state you must apply reliable principles and methods to the specific facts of the case before the court in order to render an opinion. The sufficiency of the facts and reliability of the methodology have been defined by a series of United States Supreme Court cases.

The first case of importance is *Frye v. US,* 293 F. 1013 (D.C. Cir. 1923). *Frye* sets forth the "General acceptance" test. The court in *Frye* ruled that while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

The next and probably more often followed case is *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993). The trial judge is to act as a "gatekeeper" and determines whether the expert's proposed testimony is relevant, by determining whether the testimony is helpful to the trier of fact and whether the testimony truly relates to issues in the case. At this point, Federal Rule of Evidence Rule 702 has superseded *Frye*, the standard of review that was established for *Daubert* challenges is still appropriate.

Based on *Daubert*, the following are guideline factors on whether the expert's methodology is reliable:

Testing: Has the theory or technique been tested?

Peer review: Has the theory been subjected to peer review discussion in publications.

Error rate: Does the theory or technique have a high known or potential rate of error.

General acceptance: Incorporates the *Frye* test as a factor to decide whether the theory or methodology has attracted widespread acceptance in the relevant scientific or professional community.

Another case of primary importance is *Kumho Tire Co. v. Carmichael,* 526 US 137 (1999), wherein the court ruled that *Daubert's* "gatekeeping" standard applies to all expert testimony by stating "The initial question before us is whether the basic gatekeeping obligation applies only to scientific testimony or to all expert testimony. We, like the parties, believe that it applies to all expert testimony."

Based on the statutes and relevant case law, both the attorney for your client and the opposing attorney will intensely question you. On direct examination the attorney for your client will question you about your credentials, education, experience, and question you on the methodologies and theories applied to the specific facts of the case, in order to satisfy the elements of the Federal Rules of Evidence and the case law in your circuit to qualify you as an expert. Further, the attorney could ask you to describe the most detailed step-by-step description of the method for doing each thing you did in this case. Then the attorney will ask if the method is in compliance with standards in the industry. This portion of the questioning should flow relatively easy.

After the attorney for your client has attempted to qualify you as an expert, the opposing attorney will then have an opportunity to either stipulate that you are an expert, or will cross-examine you regarding your credentials. It is normal to feel very uncomfortable and defensive during this process, since someone whom you barely know will attack your education, experience, and methodologies. Although your credentials are more than likely, very impressive; on cross-examination, the opposing attorney will "pick holes" in your credentials and your

compliance with industry standards. The opposing attorney will question your educational background; will specifically point out that you have never opined before regarding the specific facts present in this case; and will question whether you are qualified to render an opinion regarding the issue present.

Stay calm and do not get defensive or adversarial; just answer the questions. Even though you may be uncomfortable, you will be prepared. You will know what types of questions to expect since you have been through this series of questions before in your deposition. Study your deposition, find the holes, fill them or be prepared to explain their irrelevance to your testimony. It is best to do this on direct examination, so that you can minimize the weakness before the Judge hears your cross-examination.

II. DIRECT EXAMINATION

On direct examination, your lawyer will ask you questions for you to explain your theories, research, methodology, processes and ultimately your opinion. Direct examination is the only opportunity you have to openly describe your position.

Most of the direct examination questions will consist of WHO, WHAT, WHEN, WHERE, HOW and WHY. These questions are known as foundation questions. On direct, the attorney is very limited in when he leading questions may be used (i.e. a question that suggests to the witness the answer the lawyer wants to receive). Therefore, the expert and attorney must coordinate the testimony in an orderly fashion. A basic understanding of the rules can aid you in helping the attorney present your testimony.

A. FEDERAL RULES OF EVIDENCE:

It is important for the expert to understand how the courtroom operates so that you are fully educated, and therefore, more at ease while you are testifying. Further, your opinion and testimony in order to be admitted into evidence must comply with the Rules of Evidence.

The Federal Rules of Evidence are applicable in all *civil and criminal* cases in the United States courts of appeal, district courts, the Court of Claims, and in proceedings before United States magistrates. Evidence law can be stated in one sentence: **Material** and **relevant** evidence is admissible if **competent**.

Materiality exists when the proffered evidence relates to one of the substantive legal issues in the case. The use of probative evidence contributes to proving or disproving a material issue.

Relevance is defined by Federal Rule 401 as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Competence is the requirement that the proffered evidence, concededly material and relevant, does not violate an exclusionary rule. The most common exclusionary rule is Federal Rule of Evidence 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time, which states:

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

B. TESTIMONIAL EVIDENCE

There are two types of evidence you will be testifying about: Direct and Circumstantial. Direct evidence relies on actual knowledge and goes directly to a material issue without intervention of an inferential process. Circumstantial Evidence relies on inference and is evidence of a subsidiary or collateral fact from which, alone or in conjunction with a cluster of other facts, the existence of the material issue can be inferred. To the extent possible, you want to rely on direct evidence (i.e. a paper trail). Sometimes you will have to rely on circumstantial evidence. When you do, you will be vulnerable on cross-examination. Therefore, the underlying facts of your circumstantial evidence need to be as bulletproof as possible.

The courtroom presentation of evidence can be a deciding factor in a judge's decision. As such, it is imperative to remember the Boy Scout Motto – "Be Prepared". The attorney should spend adequate time preparing you for your testimony. It is important to sequence your testimony so it is easy for the judge to follow. This will also help lay the proper foundation for your testimony and paint a picture for the court. At all times you must remember that Judges are normally not financially sophisticated. Therefore, explain as much as possible in layman's terms and use demonstrative evidence to highlight the facts you relied on to develop your opinion. It is important when you are testifying to never say "NEVER," "ALL," or any other absolute statement. This will ALWAYS come back to haunt you on cross-examination.

It is extremely important to meet with the attorney prior to trial to discuss preparing for the trial. The courtroom is an extremely adversarial environment, and if not properly prepared, will eat you alive. Again, the most important rule while testifying is to LISTEN and RESPOND ONLY TO THE QUESTIONS ASKED.

In accordance with that, the following are a list of guidelines and reminders for overall preparation for trial:

- As a witness, every word you state, whether in a deposition or trial, is documented, given extreme importance and intensely scrutinized.
- Listen to what the attorney ACTUALLY asks, and respond to what was asked. Don't try to ascertain what someone meant to say, answer the question posed.
- Treat each question individually. Don't assume that one question builds off of the previous question.
- Each and every word of a question counts. Don't answer the question unless you can answer every part of the question truthfully. If you don't understand the question, don't be afraid to say so, or if there is more than one way to interpret a question, ask for clarification.
- You are in charge. Everyone is listening to what you have to say.
- You can control the speed, tone and difficulty of the questions.
- Answer the questions as simply as possible.
- Think before answering. Repeat the question in your head before answering to make sure you understand it.
- You are not trying to prove the other side wrong. You are testifying to render your opinion.

It is just as important for you to be prepared as it is for you to help prepare the attorney. As experts, it can be intimidating to testify and if you are not an attorney, or not a practicing attorney, you may not know the procedures involved in testifying. There are many common things that witnesses may not know, but are afraid to ask or won't tell the lawyers. This can do

more damage that good. Preparing is a two-way street, you have to know how the legal system works, and the lawyer has to understand the work you performed and the report you prepared.

Therefore, ask the lawyer questions. Never feel embarrassed about clarifying procedural or substantive issues. Ask the lawyer to explain any "legalese," which you may not understand. Further, never feel threatened by the lawyer; it is ok to ask for help. The bottom line is that most lawyers are not used to testifying, and may not always properly explain the legal process and the intricacies of same. Since, as an expert, you are highly educated, a lawyer may assume that you understand the legal process and how to testify.

However, keep in mind that the title of an expert does not automatically mean communicator. Communicating the results of your report can be difficult. Meeting with the lawyer and discussing your report will alleviate some of the difficulty. Further, meeting with the lawyer will give you an opportunity to make sure the lawyer understands the methodologies, process and opinions contained in your report. It is your job to make sure the lawyer understands the basis of your report and what your testimony will encompass, so that he can ask you the proper questions on direct examination.

C. EXHIBIT EVIDENCE

Your report speaks just as if it were in the witness stand testifying; and therefore, it must speak for itself. Since it cannot answer cross-examination questions, you have to endure cross-examination and attacks on your report. It is not your job to be adversarial, merely answer the questions and remain professional. Remember that you are making a record, so whatever you say will be documented.

1. FEDERAL RULE 26(a)(2)(B) – Elements required for written reports of an expert witness:

"(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report **prepared and signed** by the witness.

The report shall contain:

1. a complete statement of all opinions to be expressed and the basis and reasons therefore;
2. the data or other information considered by the witness in forming the opinions;
3. any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
4. the compensation to be paid for the study and testimony; and
5. a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1)."

2. APPLICATION OF FEDERAL RULE 26(a)(2)(B)

The primary exhibit you will be testifying to will be your written report. There are some important guidelines you should keep in mind regarding all written reports. All documents, including schedules, charts, graphs, and written narratives, whether part of your report or presented as exhibit evidence in support of your testimony, should clearly indicate they were prepared solely for use in the subject dispute or litigation. Further, depending on the situation, you should indicate the status of the document, such as draft, Tentative, Preliminary, or Subject to Change, as you may obtain additional information prior to the final report. Or when working as a non-testifying, consulting expert or before being designated as the testifying expert witness, you should designate that the report is privileged and Confidential, prepared for litigation under the attorney work – product privilege. The following types of documentation may be utilized in the court process: (1) written report submitted to trier of fact (usually prior to oral testimony); (2) exhibits that support or explain your oral testimony; (3) written report prepared by expert and submitted to client (for purposes of settlement); (4) affidavit in lieu of testimony and (5) working papers, supporting documents submitted for discovery.

Your final written report and any documentation in support thereof, should be bullet proof and should be so specific, credible and substantiated, that your testimony is unwarranted.

Summarily stated, ALL OPINIONS must be stated in the written report and ALL EXPLANATIONS for the basis and reasons for the opinions should be stated. Your final opinion should be supported in a step by step process, or a "drill down method" listing of exhibits. Your analysis and data should be laid out succinctly and methodically, with one exhibit leading to the next to explain your final opinion. There should be no holes, or leaps in your report and each fact supporting your opinion should be stated in an exhibit, with the next exhibit

building off of it. One exception; however, is that sometimes you will have a subjective opinion which you testify to, which is acceptable, but you should definitely have some underlying facts to support your subjective opinion.

A witness cannot read her testimony from the report, you must testify based on your knowledge of preparing a report. During your direct testimony, you could be on the witness stand for a significant period of time, so sometimes you may need to refresh the memory about your report. If this happens, you can use your report to refresh your recollection, to substitute for your forgotten testimony upon authentication of the writing, or in cross-examination of the witness.

There are two ways in which this can be done: Present Recollection Revived and Past Recollection Recorded. For present recollection revived, a witness may use any writing or thing for the purpose of refreshing her present recollection. You usually may not read from the writing while you actually testify, since the writing is *not authenticated,* is *not in evidence,* and may be used solely to refresh the witness' recollection. The writing is intended to help you to recall by jogging your memory. The sworn testimony must demonstrate a *present* recollection

For past recollection recorded, if you state that you have insufficient recollection of an event to enable yourself to testify fully and accurately, even after you have attempted to revive your recollection, the *writing itself may be read into evidence* if a proper foundation is laid for its admissibility. This use of a memorandum as evidence of a past recollection is frequently classified as an *exception to the hearsay rule.* The foundation for receipt of the writing into evidence must include proof that: (1) witness had personal knowledge; (2) writing was made by the witness under her direction or that it was adopted by the witness; (3) writing was timely

made when the matter was fresh in the mind of the witness; (4) writing is accurate; and (5) witness has insufficient recollection to testify fully and accurately.

III. CROSS EXAMINATION

There is a distinct difference in how a witness should answer questions on direct examination and cross-examination. One attorney is your ally and the other your opponent. To survive cross you must learn to **think like a litigator.**

Cross-Examination is the most important and effective part of litigation. You have explained your theories, research, methodology, processes and ultimately your opinion on direct examination, and now the opposing lawyer will use leading questions to pick and choose what he will attack, what he will highlight, or how to challenge your credibility. The most important rule for cross-examination, BE CONCISE. A qualified and experienced litigator will use leading questions, which more often than not, can only be answered with a "yes" or "no." If you can answer the question with a yes or no, then do so, do not try to elaborate. You can elaborate on re-direct examination. Whenever possible, you are better off explaining an issue with your attorney and not the opponent's attorney. Resist that urge to explain the flaw in the cross-examiner's portrayal of your opinion during cross. As discussed above, the opposing attorney will try to "poke holes" in your qualifications and experience, but more importantly, on cross-examination, the opposing lawyer will attempt to "poke holes" in your report and opinion.

A. ATTORNEY TRAPS:

Attorneys on cross-examination will try to trap you by using the following tactics:

1. The opposing lawyer will try to make you their witness and use you to reinforce their case by attempting to get you to agree to facts, which support the opposing side's case, without re-explaining your theory

2. They will attack your facts, because your opinions are based on your facts
3. The lawyer will change the facts that the expert interprets to see how that would change their conclusion
4. The lawyer will try to expose your bias (i.e. money, friendship)
5. The lawyer will attack your credibility based on treatises, books, or articles of well known scholar
6. The lawyer will attack the big and little mistakes in the report
7. The lawyer will try to expose why your thinking is wrong. (usually this backfires, so just be patient and calm)

In response to these tactics, your job is to take your time, answer the question asked and stay calm. It is acceptable to answer "I don't know," but you should not use it as an escape. Most importantly, try to remain consistent with your previous testimony from your deposition. One of the easiest ways for an opposing attorney to lower your credibility with the Judge is to show inconsistencies with your testimony from your deposition and now at trial. This process is called impeachment. As you recall, at your deposition, you testified under oath, and a transcript resulted from the proceedings. If the opposing attorney finds inconsistencies with your testimony, although the transcript will not be admitted into evidence, the attorney will use the transcript to attack your credibility and try to impeach you.

B. DEPOSITIONS

A deposition is testimony under oath, especially a statement by a witness that is written down or recorded for use in court at a later date. As the retained expert, the opposing attorney will want to depose you prior to the trial date. A deposition is not a trial; however, you are still under oath, and therefore you must always tell the truth. As stated above, at trial, the opposing

attorney will attempt to impeach your credibility, so the consistency of your testimony at your deposition and at trial is critical.

Be prepared for invasive questioning by the opposing attorney. The deposition is a fishing expedition and the more the opponent can learn about the arguments the witness intends to present at trial, the more prepared the opponent will be to refute the arguments. Therefore, the number one rule at your deposition is to LISTEN and RESPOND ONLY TO THE QUESTIONS ASKED. The only time you do not have to answer the questions asked are when the answer is protected by the attorney-client privilege or Fifth Amendment right violations.

Also, use the following tips as a guideline to stay focused:

- It is not your job to educate the opposing attorney and to voluntarily supply the opposing attorney with extra information. The more you tell them, the more they will use against you at trial. Yes or No answers are recommended if possible.
- It is also important to avoid normal conversation in a deposition.
- You are not there to tell a story, be concise.
- If you don't understand the question, ask for it to be explained.
- Base your answers only on the truth and with the knowledge and information you acquired through your research and fact gathering.
- Don't guess.
- Always think before speaking.

In some cases, depending on the comfort level between you and your client's attorney, it may be helpful to have a "test run" of the deposition. This is helpful for not only you, but the attorney. The attorney often finds out information that he/she was not aware of until that moment. "I don't recall at this time" and "I am not sure" are better answers than guessing. If you

need to look at your notes to answer accurately, do so. Depositions are a very difficult and unnatural process of questions and answers. The question and answer process can be very methodical, and therefore hard to keep focused and calm. Sometimes experiencing the process first hand with the lawyer can give you a sense of what it will be like in the deposition. This can more adequately prepare you and the deposition will be more productive. Remember, the goal of the deposition is to produce a clear and accurate transcript. Doing a test run, if possible, will emphasize the strengths and weaknesses of your testimony and case. You can then address the weaknesses prior to the real deposition and/or trial.

C. OBJECTIONS

Lastly, many times throughout the course of the litigation, when an attorney asks a question to a witness, the other lawyer will object. If a lawyer ever objects to a question, while you are testifying, DON'T ANSWER THE QUESTION until the Judge rules on the objection. The Judge will either state "Sustained" or "Overruled" and then depending on his ruling should instruct you whether to answer the question posed. If the objection is sustained, you will not answer the question, if overruled, you will answer the question. The most common objectionable questions, with a brief description are as follows:

1. **Compound**: Requires a single answer to more than one question
2. **Argumentative**: Leading questions that reflect the examiner's interpretation of the facts
3. **Conclusionary**: Calls for an opinion that the witness is not qualified to answer
4. **Assuming facts not in evidence**: A question that assumes a disputed fact is true and in evidence
5. **Cumulative**: A question that has already been asked and answered

6. **Harassing and Embarrassing**

IV. RE-DIRECT EXAMINATION

The opposing attorney may not give you an opportunity to explain why there are inconsistencies, but that is ok. Just stay calm and rely on your lawyer. Your lawyer will have an opportunity to "rehabilitate" you on re-direct examination, by asking you questions to either clarify or expand upon any answers which may have been damaging.

"ABC's" OF TESTIFYING

A. **Avoid Absolutes**

B. **Bulletproof** Reports

C. Be **Calm, Courteous, Confident, Cooperative**

D. Pay Attention to **Detail**

E. **Eye** contact (with judge and jury, if applicable)

F. Be **Factual**

G. Never **Guess**

H. Be **Honest**

I. Don't **Interrupt**

J. Don't use **Jargon**

K. Be **Knowledgeable**

L. **Listen, Listen, Listen, Listen, Listen, Listen, Listen, Listen, Listen, Listen**

M. Be **Methodical**

N. **Never** Assume- you know what happens when you "ass" - "u" – "me"

O. Don't answer a question if there is an **Objection** pending

P. Be **Personable, Patient, Polite, Precise, Prepared**

Q. Be **Quiet** after you answer the question

R. Be **Respectful**

S. Don't **Speculate** or be **Sarcastic**

T. **Think** before you speak, answer the question, and then STOP **TALKING**

U. **Understand** the question before you answer and then use laymen's terms

V. Keep an even tone of **Voice**

W. **Wait** for the full question to be asked

X. **X-Ray** vision (see through the cross-examiner's motives)

Y. Be **Yourself**

Z. **Zoo** - (Remember, you are in the cage and everyone is watching you)